85-1766

Supreme Court, U.S.
FILED
APR 28 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

NO. _____

TODD R. MOSS,

Petitioner,

v.

MUNICIPAL COURT OF THE NORTH ORANGE COUNTY JUDICIAL DISTRICT,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

TODD R. MOSS
5412 Redwood St.
Yorba Linda, California 92686
714/956-4566
Petitioner In Propria Persona

I

QUESTIONS PRESENTED FOR REVIEW

Whether a Defendant in a criminal prosecution, in order to obtain a verbatim record, can be compelled to pay for the services of a Court Reporter, or be compelled to devulge personal information in order to have a Court Reporter provided by the Court, in violation of his due process and equal protection of the laws.

Whether a Defendant in one Appellate jurisdiction of a State can be held to a different standard than a Defendant in another Appellate jurisdiction in violation of the due process and equal protection of the laws.

II

TABLE OF CONTENTS

Section	Title	Page
I	QUESTIONS PRESENTED	Prefix-1
II	TABLE OF CONTENTS	(i)
III	TABLE OF AUTHORITIES	(ii)
IV	OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS DELIVERED IN THE COURTS BELOW	(iii)
V	JURISDICTION	1
VI	CONSTITUTIONAL PROVISIONS AND STATUTES	2
VII	STATEMENT OF THE CASE	10
VIII	REASONS FOR GRANTING THE WRIT	15
	APPENDIX	17

TABLE OF AUTHORITIES

Cases: Page

Andrus v. Municipal Court (1983)
143 Cal. App. 3d 1041..... 11, 20, 37, 41, 42 43

Armstrong, In re (1981)
126 Cal. App. 3d 565 ..... 10, 12, 24, 26, 30, 37, 40, 41, 42, 43, 47, 54, 55, 56, 57,

Beck v. Ransome-Crunney Co. (1919)
42 Cal. App. 674; 184 P. 431..... 60

Boyd v. United States (1886)
116 US 616..... 62

Cake v. City of Los Angeles (1913)
164 C. 705; 130 P 723..... 62

Griffin v. Illinois (1956)
351 US 12; 100 L.Ed. 891..... 55

March v. Municipal Court (1972)
7 Cal.3d 422; 102 Cal Rptr 597..... 55

Mayer v. City of Chicago (1971)
404 US 189; 30 L.Ed. 2d 372..... 55,

McDonald v. Patterson (1880)
54 C 245..... 62

People v. City of Buenaventura (1931)
213 C. 637; 3 P2d 3..... 62

People v. California Fish Co. (1913)
166 C. 576; 138 P 79..... 62

People v. Troche (1928)
206 C 35; 273 P. 767..... 61

Oakland Paving Co. v. Hilton (1886)
69 C. 479; 11 P. 3..... 62

Preston v. Municipal Court (1961)
188 Cal. App. 2d 76, 10 Cal Rptr 301.
..... 56

Williams v. Oklahoma City (1969)
395 US 458; 23 L.Ed.2d 440..... 56

IV

OFFICIAL AND UNOFFICIAL
REPORTS OF OPINIONS
DELIVERED IN THE COURTS BELOW

(All Unpublished)

1. TODD R. MOSS v. MUNICIPAL COURT OF THE NORTH ORANGE COUNTY JUDICIAL DISTRICT, (People of the State of California, Real Party in Interest), Case No. 47 48 03. [Superior Court of California, County of Orange]. (Petition for Writ of Prohibition/Mandamus)

2. TODD R. MOSS v. MUNICIPAL COURT OF THE NORTH ORANGE COUNTY JUDICIAL DISTRICT, Case No. G003507. [Court of Appeal, Fourth Appellate District, Division Three]. (Petition for Writ of Prohibition/Mandamus)

1. TODD R. MOSS v. MUNICIPAL COURT OF THE NORTH ORANGE COUNTY JUDICIAL DISTRICT, Case No. G003507. [Supreme Court of the State of California] (Petition for Review)

III

JURISDICTION

The date of the denial of Petitioner's petition for review by the California Supreme Court from which this Petition for Writ of Certiorari is taken is January 30, 1986. A petition for rehearing to grant review is not accepted for filing by the Clerk of the Supreme Court of California since there is no provision for such a petition for rehearing in the California Rules of Court. This Petition for Writ of Certiorari is being filed within ninety (90) days of the denial by the California Supreme Court. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

IV

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

Preamble of the Constitution of the United States

We, the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

United States Constitution, Article I, Section 10

No State shall...pass any...Law impairing the Obligation of Contracts,.

United States Constitution, Article VI, clause 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

United States Constitution, Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated,....

United States Constitution, Amendment V

No person shall be deprived of life,

liberty, or property without due process of law;....

United States Constitution, Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

United States Constitution, Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

United States Constitution, Amendment XIV

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens...; nor shall any State deprive any person of ...property,

without due process of law; nor deny to any person...the equal protection of the laws.

STATE CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

California Constitution, Preamble

We, the People of the State of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution.

California Constitution, Article I, Section 1

All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness and privacy.

California Constitution, Article I, Section 7(a)

A person may not be deprived of... property without due process of law or denied equal protection of the laws;....

California Constitution, Article I, Section 7(b)

A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens.

California Constitution, Article I, Section 9

A...law impairing the obligation of contracts may not be passed.

California Constitution, Article I, Section 13

The right of the people to be

secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated;....

California Constitution, Article I, Section 24

Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution. This declaration of rights may not be construed to impair or deny others retained by the people.

California Constitution, Article I, Section 26

The provisions of this Constitution are mandatory and prohibitory, unless by express words they are to be declared otherwise.

California Constitution, Article III, Section 1

The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land.

California Constitution, Article III, Section 3

The powers of the state government are legislative, executive and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.

California Constitution, Article VI, Section 1

The judicial power of this State is vested in the Supreme Court, courts of

appeal, superior courts, municipal courts and justice courts. All except justice courts are courts of record.

California Constitution, Article VI, Section 14

Decisions of the...courts of appeal that determine causes shall be in writing with reasons stated.

V

STATEMENT OF THE CASE

This Petition for Writ of Certiorari was instituted by TODD R. MOSS (MOSS) against the Municipal Court of the North Orange County Judicial District, the Honorable Robert B. Hutson, Judge Presiding, for violations of Moss' Equal Protection of the laws and Due Process Rights as guaranteed by the California Constitution and the United States Constitution, by denying MOSS his right to a court reporter unless MOSS buys that right by contracting with said reporter.

This Petition for Writ of Certiorari seeks to compel the California Supreme Court to settle the conflict of opinions with regard to In re Armstrong, 126 Cal. App.3d 565 which requires some means of

providing a verbatim record to any accused misdemeanant on request, and Andrus v. Municipal Court, 143 Cal. App.3d 1041 where, a Court of Appeal in another jurisdiction stated that a person had to show indigency in order to have a reporter provided at public expense.

MOSS has no further avenue of relief available in the State courts and petitions this Court due to said violations of rights and due process.

On or about March 27, 1985, in the county of Orange, State of California, MOSS, was arrested and charged on a 4 count misdemeanor complaint.

On or about April 17, 1985 MOSS filed several motions in the respondent court,

including:

Notice and Demand for a court reporter to be present at all hearings and at trial pursuant to In re Armstrong, 126 Cal App 3d 565. Extract of MOSS' Motion is in the Appendix herewith.

At the motions hearing Judge Hutson granted defendant's motion for court reporter.

On or about August 30, 1985 plaintiff filed written opposition to MOSS' court reporter motion.

On or about October 22, 1985 Judge Hutson reversed his earlier decision and denied the services of a court reporter unless MOSS made a showing of indigency by filling out a financial statement and giving information about his financial

status.

MOSS objected to the questions on the form and stated so on the form by placing "OBJ 4th & 5th Amend.".

Judge Hutson ruled the financial statement as being unacceptable and denied the services of a court reporter and informed MOSS that he would have to pay for the said reporter retroactive back to April 17. Extract of the Reporter's transcript is in the Appendix herewith.

On November 21, MOSS submitted a Petition for Writ of Prohibition/ Mandamus in the Superior Court in Santa Ana which was filed and denied on November 22. Extract of the Order is in the Appendix herewith.

On December 4, MOSS filed a Petition for Writ of Prohibition and/or Mandamus in the Court of Appeal, said petition was denied on December 9. Extract of the Order is in the Appendix herewith.

On December 19, MOSS filed a Petition for Review in the California Supreme Court, said petition was denied on January 30, 1986, hence this PETITION to the Supreme Court of the United States. Extract of the Order is in the Appendix herewith.

VI

REASONS FOR GRANTING THE WRIT

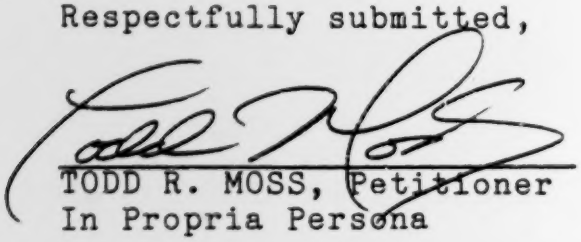
Petitioner is at an impasse wherein his rights to due process and equal protection of the laws are being violated in that he is being forced to 'buy rights' already guaranteed by the Constitutions of both the State of California and United States of America. California Constitution, Article I, §§ 1 & 7 and United States Constitution, Amendments 5 and 14.

If the rights and freedoms of the People, which Petitioner holds so dear, are to be retained and maintained, this Court must take action in this matter to uphold and reaffirm the individual's rights to due process and equal protection of the laws.

Also, the above statement of the case, as well as the extracts in the APPENDIX, provide additional details as to why the writ should issue.

Dated this 21 day of April, 1986.

Respectfully submitted,



TODD R. MOSS, Petitioner
In Propria Persona

APPENDIX TO

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF CALIFORNIA

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

TODD R. MOSS, Petitioner, vs. MUNICIPAL COURT OF THE NORTH ORANGE COUNTY JUDICIAL DISTRICT, Respondent, THE PEOPLE OF THE STATE OF CALIFORNIA, Real Party in Interest.	)	NO. G0003507

I have this day filed Order

REVIEW DENIED

Bird, C.J. IS OF THE OPINION THAT THE PETITION SHOULD BE GRANTED.

Respectfully,

JAN 30 1986

Clerk

IN THE COURT OF APPEALS

OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

TODD R. MOSS, Petitioner, v. SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE, Respondent; THE PEOPLE OF THE STATE OF CALIFORNIA, Real Party in Interest.	)	ORDER G003507 Super Ct. No. 47 48 03

THE COURT:*

The petition for a writ of prohibition/mandate is DENIED.

TROTTER
TROTTER, Pres Justice

I CONCUR:

WALLIN, J.
WALLIN, J.

I dissent for the reasons stated in my dissenting opinion in Andrus v. Municipal Court (1983) 143 Cal. App.3d 1041, 1056-1058.

SONENSHINE, J.

SONENSHINE, J.

IN THE SUPERIOR COURT

OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

TODD R. MOSS,	)	
	)	
Petitioner,	)	
	)	
vs.	)	NO. 47 48 03
	)	
MUNICIPAL COURT OF THE NORTH ORANGE COUNTY JUDICIAL DISTRICT,	)	
	)	
Respondent,	)	
	)	
THE PEOPLE OF THE STATE OF CALIFORNIA,	)	
	)	
Real Party in Interest.	)	

Petition for Writ of Prohibition/ Mandamus denied. Based on Petitioner's declaration, this Court cannot find that the trial judge abused his discretion or acted beyond his jurisdiction, nor does it appear that as a matter of law that Petitioner is entitled to a court-provided reporter. Copy of this minute

order mailed to Petitioner this date as follows:

Todd R. Moss

5412 Redwood Street

Yorba Linda, California 92686

ENTERED 11-22-85

THIS INSTRUMENT IS A CORRECT COPY
OF THE ORIGINAL ON FILE IN THIS OFFICE

ATTEST: 11-22-85
GARY L. GRANVILLE

County Clerk and Clerk of the
Superior Court of the State of
California in and for the
County of Orange

BY Eileen Walsworth DEPUTY

TODD R. MOSS
5412 Redwood St.
Yorba Linda, California 92686

In Propria Persona

IN THE ORANGE COUNTY MUNICIPAL COURT

NORTH JUDICIAL DISTRICT,

STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA Plaintiff, v. TODD R. MOSS, Defendant.	CASE NO. NM 8502550 MOTION FOR COURT REPORTER

Notice is hereby given that the Defendant, TODD R. MOSS, respectfully requests the presence of a Certified Shorthand or Court Reporter to be present at <u>all</u> proceedings up to and during trial

on the instant case.

This request is made pursuant to California Penal Code §1045 and the decision by the California Court of Appeal, First District, Division 1, in the case of In re Armstrong, 126 Cal. App.3d 565.

Defendant herein feels that certain procedural and constitutional violations have occurred and that it is necessary and imperative that an accurate record be kept in the event this case goes to the Appeal Court.

Dated:

/S/
TODD R. MOSS
Defendant
In Propria Persona

IN THE MUNICIPAL COURT

NORTH ORANGE COUNTY JUDICIAL DISTRICT

STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	
Plaintiff,	)	
vs.	)	Case No.
TODD RICHARD MOSS,	)	NM 8502550
Defendant.	)	

OCTOBER 22, 1985

MR. AL SILVA, Deputy District Attorney, appeared as counsel for the People.

TODD R. MOSS, appeared In Propria Persona.

MILDRED J. TERRY, Certified Shorthand Reporter, Certificate Number 5913.

Fullerton, California
October 22, 1985

Afternoon Session

THE COURT: Mr. Moss, if you would step forward, please.

Good afternoon.

MR. MOSS: Good afternoon, your Honor.

THE COURT: Okay. In the matter of ...the court reporter, Mr. Moss, you've read and considered the People's motion on this matter; is that correct?

MR. MOSS: Yes, sir.

THE COURT: Do you have any contra-authorities or points of view on this matter?

MR. MOSS: When I filed my motion with Armstrong, reciting Armstrong, I requested the court reporter only to have a sufficient complete record to

permit proper consideration of my possible appeal. Now I have never asked for and have never demanded a free transcript. I have receipts at home from M & M Court Reporters to show I have paid for each and every one of my transcripts.

19401, which is the charge I am under, the last paragraph, it says upon my conviction I will then be given a bill to pay for investigative costs and costs of prosecution. I can only assume that the cost of the court reporter is also incorporated into the cost of the prosecution. By the D. A.'s office trying to have me pay for the court reporter right now only makes me feel like they have already found me guilty and they are trying to get me to pay for it right now.

THE COURT: You have read the case authorities they have cited; is that correct?

MR. MOSS: Yes.

THE COURT: Do you have anything further?

MR. MOSS: I think as a non-indigent defendant right now I have been already assessed my share of the cost. If I do file my appeal, where are we going to have a complete record of what's going on here? I would be more than willing to bring in a VCR unit to tape record it, but even then that can't go forward as the record of what happened here.

There may be a possible problem of getting the settled statements afterwards if a guilty verdict does come back.

Also, if I enforced -- paid for the cost of the court reporter and an

innocent verdict is reached, would I be able to sue the District Attorney's office and County of Orange or Rose Richter to pay for the court reporter so I can protect myself and the record?

THE COURT: Those are all questions you're asking me as though I were an attorney. I don't give legal advice. Those are things you would have to seek out by counsel of your choice, if you have the opportunity to do that. You do have remedies in the law.

The issue here, though, is whether or not since you have indicated you are not an indigent -- the Court supported your motion. When you first made the motion for a reporter, the Court agreed with you and granted you the court reporter, the Court agreed with you and granted you the court reporter and gave you the added

allegation. I recall that you would only have to pay for the transcripts if, in fact, you felt you needed them.

Remember that?

MR. MOSS: Yes.

THE COURT: So I granted the Armstrong reporter. I was familiar with the case the People have cited to indicate you are not entitled to a reporter without a showing of indigency at the outset. However, I had a different understanding of it. I now come to realize in reading the subsequent case law that I was in error in granting the court reporter on the basis that I did. For that reason, I am going to reverse myself and deny you future access to a court reporter without a showing of indigency, based on a ruling out of my own appelate district which has come down indicating you are

not entitled to a court reporter without a showing of indigency.

Do you have the ability to hire a court reporter, or do you wish to make application for indigency consideration at this time?

MR. MOSS: I'd like to state -- this is out of Mayer (sic) vs. City of Chicago -- where that court decided that the size of my pockets bears no more relationship to my guilt or innocence in this non-felony case.

Now, I don't have enough money to pay for her. I don't even have enough money to bring in a licensed attorney, so how am I supposed to afford a court reporter? And if I fill out an indigency form, all that is giving more flame to Rose Richter's fire, who is trying to get me to confess to certain amounts of possible wages or income. I think

filling out an indigency statement would only show that.

THE COURT: You wish not to fill out any forms to ask the Court to consider indigency at this time? The Court needs certain information to make a determination as to whether you qualify as an indigent to have a court reporter present.

MR. MOSS: Have you passed final judgment on this issue?

THE COURT: No.

MR. MOSS: Why don't you give me an indigency form and I will fill it out and you can call this case in 15 minutes or so?

THE COURT: It will be several hours, but I will have you go over and get the form. I'll take a look at it, if you choose to fill it out and see if you do qualify for some other type of services.

If you will see the bailiff, she'll tell you where to go, and we'll resume this later this afternoon.

(Whereupon the Court took other matters)

THE COURT: In the matter of Todd Richard Moss.

Mr. Moss, if you would please take a seat.

MR. SILVA: Your Honor, the People have a comment to make on that matter.

THE COURT: On what matter?

MR. SILVA: The Todd Moss.

THE COURT: That's why we're here.

MR. SILVA: In reference to the last stage, where Mr. Moss stated that he thought that filling out the form for indigency would be a violation because we would be able to use it against him in this trial -- and the People suggest that if the Court would simply get that information and then seal it, the

People's burden would not be lightened in any way.

THE COURT: I don't know if that's what Mr. Moss wants to do or not.

MR. MOSS: I don't know. You have a copy of it.

THE COURT: It's not satisfactory. Your haven't answered any of the questions. So, therefore, I would deny any request for indigency based on the form I have before me.

MR. MOSS: I guess we will have to go with that then.

THE COURT: I'm sorry.

MR. MOSS: I will go with that then, your decision.

THE COURT: Okay.

MR. SILVA: You see what the People are offering as an alternative at this point, is that if Mr. Moss would fill out the completed form and it be sealed,

he might be able to get to have a better chance of showing indigency.

THE COURT: Mr. Moss is aware of what he has to do. The suggestion is welcome.

Mr. Moss apparently rejects that suggestion, correct?

MR. MOSS: Yes.

THE COURT: I have here before me, Mr. Moss, the form, Declaration of Financial Status, that would be submitted to the Court as per Penal Code Section 987.8, and I read that you have written in the words or the letters OBJ period. What does that mean?

MR. MOSS: Objection, Fourth and Fifth Amendment.

THE COURT: OBJ, four and five and AM period.

That means objection on grounds of Fourth and Fifth Amendments for each of the spaces indicated on this form for

declaration of indigency; is that correct?

MR. MOSS: That's correct.

THE COURT: Okay.

Is there any more argument on the issue of the right to have a reporter on this matter, pursuant to the motion by the People?

MR. MOSS: I don't have any more arguments, other than the fact that this will be taken up on a writ.

THE COURT: Everything we do we expect will be taken up on a writ, Mr. Moss. That's why we're going through it. That's part of the joy of working our way through it.

If there is no more argument, the Court is ready for ruling on the issue.

Anything further?

MR. SILVA: No, your Honor.

THE COURT: Mr. Moss, anything

further?

MR. MOSS: No.

THE COURT: The Court is going to deny your continued access to a court reporter at the Court's expense based on the Andrus versus Municipal Court case that is cited by the People as their authority, 143 Cal App. 3d 1041. The Court is going to reverse its original ruling that it made based on the Armstrong case. In that instance, the defendant has chosen not to complete a declaration of financial status for the Court to determine whether or not he can meet the criteria of the Andrus case for indigency, for which the Court then would continue the supplying of a court reporter for purposes of these hearings and the trial, and thereby placing it outside the Andrus mandate by not indicating either that he is indigent or

not indigent, although I believe there are statements you made earlier, Mr. Moss, that would indicate that you are probably not indigent, that you have purchased some transcripts at your own cost, that you feel even though you do have access to income, that this would be an extreme hardship for you to foot the bill of a reporter of the nature we have had for these hearings; is that right?

MR. MOSS: I have access to wages but not enough to afford a court reporter.

THE COURT: Okay. You said a minor case, indicating that the size of the pocketbook is not the sole determining factor. However, you have given the Court no information to determine whether the size of your pocketbook is a factor. So if you gave the Court a

statement to determine you have eligibility, the Court has to deny it.

At this time the services of a court reporter at court expense will discontinue, and you will be held financially responsible for the services that have been rendered up to this point. That in itself is another financial area that, of course, will come under the statement you have made at the end of the case. Total evaluation will be made based on whatever costs shall be necessary in and of themselves.

MR. MOSS: I would just like to say, your Honor, that the court reporter, up to this point, has been granted through the Court's ruling.

THE COURT: That is correct.

MR. MOSS: And now I'm told that I have to pay for the court reporter's services up to this point.

THE COURT: Had you not, in your moving papers to the Court, asked for a reporter on the basis of Armstrong, if you had just come in and indicated to the Court that you wished to have a court reporter as a matter of right, and the Court granted you the use of a court reporter, then the Court would be, I feel, in a situation which I perhaps did not properly advise you of your liability to to pay for these services. But in your moving papers, as I read your motion -- and that's motion notice and request is made pursuant to California People Code Section 1045 and the California Court of Appeal, First District, Division One, case of In re Ann Shaw (sic).

The language of that case puts you on notice that it is a history, and in fact they mandate that that person,

to utilize the reporter's services, and transcripts of the reporter, is liable for those services.

The Andrus case, since it's from another appellate district -- Armstrong is from the First District and Andrus is from the Fourth District -- I am compelled to follow the case that is from my own higher court, neither one of them being resolved by the California Supreme Court.

So the People are quite proper when they point out to me that I must follow the Andrus ruling as opposed to Armstrong. I had originally agreed with your points of view on that matter.

I gave it some thought as to whether you should have to pay for the reporter up to this time, since we were in agreement on the matter of a free reporter at court expense, and as a

matter of fact, I told you you would have to pay for a transcript, absent a showing of indigency, if you wanted the transcript. However, your reading of Armstrong and Andrus and also citing Penal Code Section 1045 tells the Court you were put on notice that there is a possibility you would have to pay for some of these services. Andrus makes it clear that is the intention of the Court that you do pay for those services.

So based on that, I feel you had the adequate notice that there was a liability for the court reporter's transcripts, or just the court reporter herself.

So that is the basis of my decision that you will be held liable for services of a court reporter. That is an issue you can perhaps have resolved with a writ. And who knows, we

may have the Armstrong reporter or Andrus reporter at another time.

MR. MOSS: We may see a Moss versus Municipal Court here pretty soon.

THE COURT: That's correct, and I will be telling the People, "Under the Moss ruling, you be entitled to a court reporter at court expense." ....

REPORTER'S CERTIFICATE

I, MILDRED J. TERRY, a Certified Shorthand Reporter and a Notary Public of the State of California with principal office in the County of Orange, do hereby certify that the foregoing proceeding was written by me in Stenotypy, and transcribed into typewriting and that the foregoing is a true and correct copy of my shorthand notes thereof.

MILDRED J. TERRY

Dated: NOV151985

NOTE

THE PETITION FOR REVIEW HEREIN IS THE SAME AS THE PETITIONS FOR PROHIBITION/MANDAMUS FILED WITH THE SUPERIOR COURT AND THE COURT OF APPEAL. FOR THE SAKE OF AVOIDING REPETITION, ONLY THE PETITION FOR REVIEW TO THE SUPREME COURT OF CALIFORNIA IS DUPLICATED

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

TODD R. MOSS Petitioner, vs. MUNICIPAL COURT OF THE NORTH ORANGE COUNTY JUDICIAL DISTRICT, Respondent, THE PEOPLE OF THE STATE OF CALIFORNIA, Real Party in Interest.	PETITION FOR REVIEW

TO THE HONORABLE ROSE ELIZABETH BIRD, CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

The defendant, TODD R. MOSS, petitioner in the above-entitled case, alleges that:

1. Petitioner is the defendant in the action entitled PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff v. TODD R. MOSS, Defendant, Case No. 8502550

2. Respondent is the NORTH ORANGE COUNTY MUNICIPAL COURT, the Honorable Robert B. Hutson, Judge presiding.

3. Real Party in Interest are THE PEOPLE OF THE STATE OF CALIFORNIA.

4. On or about March 27, 1985, in the county of Orange, Todd R. Moss, Petitioner (defendant) was arrested and charged on a complaint....

5. On or about April 17, defendant filed several motions in the respondent court, including:

(a) Notice and Demand for a court reporter to be present at all hearings and at trial pursuant to In re Armstrong, 126 Cal App 3d 565.

6. At the motions hearing Judge Hutson granted defendant's motion for court reporter.

7. On or about August 30, plaintiff filed written opposition to defendant's

court reporter motion a copy of which is attached hereto as Exhibit "A".

8. On or about October 22, Judge Hutson reversed his earlier decision and denied the services of a county paid court reporter unless defendant made a showing of indigency by filling out a financial statement.

9. Defendant filled out and answered each and every question on the financial statement with objections based upon his rights guaranteed by the Fourth and Fifth Amendments to the Constitution of the United States.

10. Judge Hutson ruled the financial statement as being unacceptable and denied the services of a county paid court reporter and informed defendant that he would have to pay for the said reporter retroactive back to April 17.

11. In making this ruling, Judge Hutson was acting in excess of his

jurisdiction by:

(a) Denying defendant his right to due process and equal protection under the law by refusing a defendant in a criminal (misdemeanor) case to the services of a county paid verbatim record.

(b) Forcing defendant to rely on memory and/or note taking to the settlement of a statement on appeal.

(c) Petitioner is being denied his right to have available a full and complete verbatim record should an appeal be necessary.

(d) Prior to being found guilty of any crime, petitioner is being forced to pay for the services of a court reporter <u>just</u> to protect his right to have a full and verbatim record available should an appeal be necessary.

12. On November 21, petitioner submitted a Petition for Writ of Prohibition/Mandamus in the Superior Court in Santa Ana which was filed and denied on November 22, a copy of the minute order is attached hereto as Exhibit "B".

13. On December 4, petitioner filed a Petition for Writ of Prohibition/ Mandamus in the Court of Appeal, said petition was denied on December 9, a copy of the Order is attached hereto as Exhibit "C".

14. The defendant is beneficially interested in the issuance of a Writ of Prohibition/Mandamus by virtue of the fact that:

(a) If the People are allowed to gó to trial without a verbatim record, defendant feels, because of the complexity of the case appealable issues

will be lost.

(b) Different Courts of Appeal in this state have ruled on this issue in different ways and defendant feels that his rights of due process and equal protection under the laws are being violated here by virtue of the fact that he is neither wealthy nor indigent.

(c) By contracting with a court reporter, defendant may be forced to cut his defenses down in order to afford a verbatim record thereby lessening his chances of an acquittal in the instant case.

14. This petition is accompanied by supporting memorandum of points and authorities on all appropriate points.

WHEREFORE, Petitioner requests:

1. That this court issue an alternative Writ of Prohibition prohi-

biting trial in the above-entitled matter, or,

2. Issue a Writ of Mandamus ordering respondent to not proceed to trial without a county paid court reporter present, and/or forcing him to pay for the services of the court reporter retroactive to April 17.

3. For such other relief as the court may find just and proper.

Dated this 18th day of December, 1985.

Respectfully submitted,

TODD R. MOSS
~~Petitioner~~
In Propria Persona

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF ORANGE.

I, the undersigned, say:

I have read the foregoing PETITION FOR REVIEW and know the contents therein.

I am a party to this action. The matters stated in it are stated on information and belief, and as to those matters I believe them to be true.

Executed on this 18th day of December, 1985 at Anaheim, California.

I declare under penalty of perjury that the foregoing is true and correct.

TODD R. MOSS
In Propria Persona

MEMORANDUM OF POINTS AND AUTHORITIES

In re Armstrong (1981) 126 Cal.App.3d 565; 178 Cal.Rptr. 902, holds upon request, and without showing indigency, a verbatim record must be provided at state expense in misdemeanor prosecutions. This holding was a result of Armstrong's inability to obtain a settled statement on appeal under California Rules of Court, Rule 187 which in turn resulted from the inability of the trial court, prosecution and defense to agree on the facts which led to Armstrong's conviction. In essence, Armstrong acknowledged a constitutionally adequate appeal includes the due process guarantee of an adequate appellate record. Armstrong found due process not satisfied by a settled statement procedure which, by its very nature, requires compromise among the memories

and perceptions of participants with a stake in its outcome.

March v. Municipal Court (1972) 7 Cal.3d 422; 102 Cal Rptr 597, followed a long line of cases which first required free transcripts to indigent felons on appeal (Griffin v. Illinois [1956] 351 US 12; 100 L.Ed. 891) and subsequently provided them to indigent misdemeanants. (Mayer v. City of Chicago [1971] 404 US 189; 30 L.Ed.2d 372. Some courts go to great lengths to chastise the court in Armstrong for failing to limit the provision of court reporters to indigent misdemeanants only. The majority's analysis of Armstrong concludes the court erred in ordering reporters for all misdemeanants since all of the cases cited by Armstrong hold the right to a free transcript for misdemeanants requires a showing of indigency. (Mayer

v. City of Chicago, supra; Williams v. Oklahoma City [1969] 395 US 458, 23 L.Ed.2d 440; March v. Municipal Court, supra; Preston v. Municipal Court [1961] 188 Cal App 2d 76, 10 Cal Rptr 301.)

Notwithstanding the majority's criticisms, they conclude **Armstrong** was "half right" by holding indigent misdemeanants have a right to a court reporter at state expense. The majority reasons as follows: (1) March v. Municipal Court abolished the "colorable need requirement" (i.e., any lawyer worth his salt can conjure up appellate issues pretrial); (2) March v. Municipal Court requires an adequate appellate record to satisfy due process; (3) a fortiori court reporters (for indigents) must be provided at state expense upon request in misdemeanor proceedings.

Since no case directly holds (other

than **Armstrong**) court reporters must be provided to indigent or nonindigent misdemeanants, the majority relies upon the exercise of judicial administration to support its holding. They declare "there is little an appellate court can do when the collection of a verbatim record is denied and a statement cannot be settled, except to reverse for lack of an adequate record." Thus, the majority comes full circle to **Armstrong** in holding the inadequacy (or mere potential inadequacy) of a settled statement compels as a prophylactic remedy the obligation to provide court reporters to indigent misdemeanants in order to avoid the necessity of reversals and retrials.

The above analysis does not, however, support the majority's holding court reporters must be provided to only the indigent. Acknowledging the inade-

quacy of the settled statement process, the majority makes much of the costs inherent in supplying a verbatim record in all misdemeanor proceedings, and points out most misdemeanants do not appeal, nor do all misdemeanor proceedings require a court reporter. To justify the limitation of their holding to indigents, the majority asserts those who can, should pay.

This analysis merely begs the question. The fact is, court reporters are provided in all superior court criminal and civil proceedings, and in preliminary examinations (CCP §269; Pen C §869). Similarly, civil litigants in municipal courts are provided court reporters at their request (CCP §274c) regardless of how insignificant or unmeritorious the claim. Further, while most misdemeanants do not appeal, the use

of a settled statement procedure without the ability to refer to a verbatim record to resolve factual disputes, is an inadequate (or potentially inadequate) form of appellate record.

The majority holding places the nonindigent in an untenable position. Prior to trial the defendant must elect whether to expend funds and obtain the services of a court reporter or hope, upon appeal, a settled statement is constitutionally adequate. If not, the added pains of reversal and retrial await. Or does the majority hold nonindigent misdemeanants waive their constitutional right to an adequate record on appeal by choosing not to employ a court reporter? The wealthy are as entitled to due process fairness as the poor. To say the poor have a constitutional right to the due process

guarantee of an adequate appellate record, but not the nonindigent, comports with neither the spirit nor the letter of due process.

For decades it has been the law of this state to protect the individuals right to "due process". "While it is impossible to define with precision 'due process of law', it is the exact equivalent of the law of the land as used in the Magna Carta, and, broadly speaking, it means that before a man's life, liberty or property may be taken by the state, he must be given notice of the proceedings which may terminate in the taking, and be given an opportunity to be heard in his own defense. It means further that the notice shall be a real and reasonable one, and the hearing, such as ordinarily or at least reasonably, is given in similar cases." Beck v. Ransome-

Crunney Co., (1919) 42 Cal. Ap 674, 184 P. 431.

"The words 'Due Process of Law' clearly mean law in its regular course of administration, according to prescribed forms and in accordance with the general rules for the protection of individual rights." People v. Troche, (1928) 206 C 35, 273 P 767, 770. Moreover, the Constitution itself, Article I, Section 26, mandates that the Constitution is mandatory and must be followed. Quoting Mason's California Constitution, "The question of whether the Constitution is mandatory or merely directory, is settled by the Constitution itself, which ordains that each and all of its provisions are mandatory and prohibitory, unless by express words declared to be otherwise. The section not only commands that its provisions shall be obeyed, but that the

disobedience of them is prohibited. Under the stress of this rule, it is the duty of the courts to give effect to every clause and words of the Constitution." Oakland Paving Co. v. Hilton, (1886) 69 C. 479, 11 P 3 and "The provisions of the Constitution are mandatory and prohibitory unless by express words they are declared to be otherwise, and are binding upon every department of the State Government, legislative, executive, and judicial." People v. California Fish Co., (1913) 166 C 576, 138 P 79; Shay v. Roth, (1923) 64 CA 314, 221 P. 967; People v. City of Buenaventura, (1931) 213 C 637, 3 P2d 3; Cake v. City of Los Angeles, (1913) 164 C 705, 130 P 723; McDonald v. Patterson, (1880) 54 C 245.

In addition, Mr. Justice Bradley in Boyd v. United States, 116 US 616, 635

stated:

"It is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachment thereon. Their motto should be obsta principiis."

Defendant herein, would question, whether he be rich or poor, as to whether or not the state can discriminate against a person based upon its administrative schemes as opposed to inalienable rights. Defendant herein does not believe that a rich man can be discriminated against any more than a poor man.

Defendant herein, is neither rich nor poor but merely 'in between' and forced to defend himself against 4 misdemeanor counts which could lead to a maximum 4 years in the county jail and fines and penalties in excess of 40,000

dollars. Defendant is not asking the court to provide free transcripts but is merely asking the court to respect his rights as guaranteed by the due process and equal protection clauses of the Constitution of the United States and the Constitution of the State of California and provide a court reporter to insure a verbatim record is kept in the event that he should have to appeal upon conviction.

Dated this 18th day of December, 1985.

Respectfully submitted,

TODD R. MOSS
Petitioner
In Propria Persona